

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAROSLAW WASKOWSKI,

Plaintiff,

vs.

Case No. 11-13036

Honorable Sean F. Cox

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

/

**JURY TRIAL: VOLUME 4 OF 6**

BEFORE THE HONORABLE SEAN F. COX  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Tuesday, December 4, 2012

APPEARANCES:

For the Plaintiff:  
Jaroslaw Waskowski

LEE ROY H. TEMROWSKI, JR.  
Temrowski & Temrowski  
45109 Van Dyke Avenue  
Utica Michigan 48317  
586-254-5566

For the Defendant:  
State Farm Mutual  
Automobile Insurance  
Company

JAMES F. HEWSON  
Hewson & Van Hellemont  
25900 Greenfield Road  
Suite 326  
Oak Park Michigan 48237  
248-968-5200

Also Present:

TINA FILARSKA  
Court Interpreter

To obtain a copy of this official transcript, contact:  
Linda M. Cavanagh, Official Court Reporter  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard, Room 235  
Detroit, Michigan 48226  
(248) 884-0327 • linda\_cavanagh@mied.uscourts.gov

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TABLE OF CONTENTS

<u>Witnesses</u>	<u>Page</u>
JAROSLAW WASKOWSKI	
Direct Examination Continued by Mr. Temrowski	5
Cross-Examination by Mr. Hewson	21
Redirect Examination by Mr. Temrowski	49
Recross-Examination by Mr. Hewson	54
DIRECTED VERDICT MOTION BY MR. HEWSON ON BEHALF OF DEFENDANT STATE FARM	59
COURT'S RULING ON DIRECTED VERDICT MOTION	62

EXHIBITS

<u>Identification</u>	<u>Marked</u>	<u>Received</u>
Plaintiff's Exhibit A, Police report		57
Plaintiff's Exhibit B, Photographs		57
Plaintiff's Exhibit C, Vehicle repair estimate		57
Plaintiff's Exhibit D, Dr. Donahue's narrative report		57
Plaintiff's Exhibit K, Prescription for home modifications		58
Plaintiff's Exhibit Q, Certificate of No-Fault Insurance		57

1 Detroit, Michigan

2 Tuesday, December 4, 2012

3 — — —

4 (Proceedings commenced at 10:27 a.m.)

5 THE CLERK: The Court calls Case No. 11-13036,  
6 Jaroslaw Waskowski versus State Farm Mutual Automobile  
7 Insurance Company. Counsel, your appearances for the record  
8 please.

9 MR. TEMROWSKI: Good morning, Your Honor. Lee  
10 Temrowski on behalf of Mr. Waskowski.

11 MR. HEWSON: May it please the Court, James Hewson  
12 appearing on behalf of State Farm.

13 THE COURT: Good morning everybody. Ready to  
14 proceed?

15 MR. TEMROWSKI: Yes, Your Honor.

16 MR. HEWSON: Yes, Your Honor.

17 THE COURT: Let's bring the jury out.

18 (Whereupon the jury entered the courtroom at  
19 10:28 a.m.)

20 THE CLERK: Please be seated.

21 THE COURT: Okay. Good morning.

22 THE JURORS: Good morning.

23 THE COURT: How's everybody doing?

24 THE JURORS: Good.

25 THE COURT: Good. We're going to continue with the

1 trial right now. We're going to continue with Mr. Temrowski's  
2 direct examination of Mr. Waskowski. You may proceed.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. TEMROWSKI:

5 Q. Mr. Waskowski, if you will recall yesterday, you had  
6 testified as to all of the doctors' therapy that you had  
7 treated with.

8 A. Yes.

9 Q. And you told us about the facilities where testing was  
10 done.

11 A. Yes.

12 Q. We'll pick up from there.

13 As a result of injuries from the December 29th --  
14 December 29th -- December 23rd, 2009 motor vehicle accident,  
15 because of your injuries, were you prescribed medications and  
16 prescriptions?

17 THE INTERPRETER: Yes, I had.

18 Q. Please tell us what medications were prescribed and what  
19 you took.

20 THE INTERPRETER: I've got Vicodin, it is a pain  
21 killer medication, and Robaxin, I received Robaxin; they are  
22 pills which kind of relax my muscles. I got prescription for  
23 physical therapy.

24 Q. Did you ever take those medications before this automobile  
25 collision?

1 THE INTERPRETER: No.

2 Q. Who prescribed the medications?

3 THE INTERPRETER: First doctor who prescribed it, it  
4 was Dr. Wietrzkowski. Next, Dr. Glowacki.

5 Q. Do you continue to take the medications?

6 THE INTERPRETER: Yes.

7 Q. Because of your injuries from the December 23rd, 2009  
8 motor vehicle collision, because of your injuries, were you  
9 required to wear any type of appliances to any part of your  
10 body?

11 THE INTERPRETER: Yes.

12 Q. Could you tell us what appliances you wore?

13 THE INTERPRETER: It is appliance for a neck and, um,  
14 kind of corset on the bottom of -- on the lower part of the  
15 body, lower back.

16 Q. A corset?

17 THE INTERPRETER: Yes.

18 Q. And how long did you have to wear those appliances for?

19 THE INTERPRETER: I used to wear it for six, seven  
20 months, no stop. And, um, when I have a stronger pain, I used  
21 to -- I wear it.

22 Q. Do you wear it on an as-needed basis?

23 THE INTERPRETER: Yes.

24 Q. Mr. Waskowski, at the time of the December 23rd, 2009  
25 motor vehicle collision, were you employed?

1 A. Yes.

2 Q. Where were you employed at and what did you do?

3 THE INTERPRETER: I work in the company called Yes  
4 Express. I used to work as a truck driver. Um, I work -- I  
5 had, um -- um, car parts in my truck, and it was -- I was truck  
6 driver -- truck driver and the truck had automotive parts.

7 Q. How long had you been employed at Yes Express?

8 THE INTERPRETER: From May, 2010.

9 Q. How many days a week did you work?

10 THE INTERPRETER: I worked four days a week.

11 Q. And what were your job duties and responsibilities as a  
12 truck driver?

13 THE INTERPRETER: I had to take care of the truck, do  
14 inspection of the truck before -- before I went -- I had to  
15 load the truck.

16 Interpreter has to ask a question because of how he  
17 described, it's difficult to translate.

18 (Brief pause)

19 Um, I had to load the truck, I had to, um, park at  
20 the specific dock to the truck to be loaded and --

21 (Brief pause)

22 MR. HEWSON: Your Honor, could I just ask that the  
23 interpreter tell us what she's asking him before --

24 THE COURT: Yes.

25 MR. HEWSON: -- she poses the question?

1 THE COURT: Sure.

2 MR. HEWSON: Thank you.

3 THE INTERPRETER: Sure. I -- he listed a few things  
4 and I asked what else because he said I had to load the truck  
5 and so on and, um, park at the dock.

6 I had to protect the loads. Um, I had to check if  
7 the trailer is connected right to the truck. Sometimes I had  
8 to connect the trailer to the truck. I was driving to the  
9 appointed place, that's where the unloading took place, and it  
10 was loaded again.

11 Q. Did you drive a truck just in Michigan or did you drive  
12 around the country?

13 THE INTERPRETER: I drove across the United States.

14 Q. As part of your job duties as a truck driver, in addition  
15 to driving the truck, did you have to do any lifting, bending  
16 or carrying of objects?

17 THE INTERPRETER: Yes.

18 Q. And how much could those parts or objects weigh up to?

19 THE INTERPRETER: Um, one part weighs up to  
20 1,000 pounds maximum.

21 Q. Okay. And could you tell us please what was your income  
22 for working as a truck driver at Yes Express?

23 THE INTERPRETER: From May 2010, um, until my  
24 automotive accident occurred, I had -- I earned about 25,  
25 28,000, approximately.

1 Q. Okay. Is that after deductions?

2 THE INTERPRETER: No.

3 Q. Did you provide your income tax returns to Cheryl  
4 Kucharski?

5 THE INTERPRETER: Yes.

6 Q. And do you have a copy of that with you here?

7 THE INTERPRETER: Yes.

8 Q. And is that the document you provided to her regarding  
9 your lost wage claim?

10 MR. HEWSON: Your Honor, could I just ask for a time  
11 frame when this occurred?

12 MR. TEMROWSKI: This is 2009, if you would like to --

13 MR. HEWSON: No, no, no, I meant -- what I meant was  
14 the foundation for when he gave this to Ms. Kucharski, even if  
15 it was just or after the litigation. Thank you.

16 BY MR. TEMROWSKI:

17 Q. When did you provide this document to Ms. Kucharski?

18 THE INTERPRETER: I receive a letter from her that  
19 they need my, um, income tax.

20 Q. And did you give them to her?

21 THE INTERPRETER: Yes.

22 THE COURT: I think the issue is what time?

23 MR. HEWSON: Yes, that was it, Your Honor. Thank  
24 you.

25 BY MR. TEMROWSKI:



1 Q. Okay.

2 THE INTERPRETER: In 2011.

3 Q. Okay. What does your income tax returns for 2009 say your  
4 gross income was?

5 THE INTERPRETER: Forty-three thousand nine hundred  
6 ninety-six.

7 Q. Have you worked at all since the automobile collision of  
8 December 23rd, 2009?

9 THE INTERPRETER: Yes, I work all my life.

10 Interpreter has to verify -- clarify something. It  
11 seems like he didn't understand. Can you please repeat the  
12 question?

13 MR. HEWSON: Your Honor, I object. All she can do is  
14 translate the answer. It's -- I don't believe it's her job to  
15 decide whether or not that's a correct answer.

16 THE COURT: That's true.

17 MR. HEWSON: Thank you.

18 BY MR. TEMROWSKI:

19 Q. The question is have you worked since the car accident?

20 THE INTERPRETER: No.

21 Q. Have doctors disabled you from working?

22 THE INTERPRETER: Yes.

23 Q. What doctors?

24 THE INTERPRETER: Dr. Wietrzkowski and Dr. Glowacki.

25 Q. Knowing what your job requires you to do as a truck driver

1 at Yes Express and having done that before the car accident, do  
2 you feel you could return back to work and do that job?

3 THE INTERPRETER: No.

4 Q. Mr. Waskowski, did you incur household help expenses and  
5 attendant care expenses? Go that far?

6 MR. HEWSON: Your Honor, I only object because the  
7 word incur has a legal meaning that the Court will share with  
8 the jury. To the extent it calls for a legal conclusion, I  
9 object.

10 MR. TEMROWSKI: I'll rephrase it.

11 THE COURT: Sure.

12 BY MR. TEMROWSKI:

13 Q. Mr. Waskowski, because of injuries from the auto accident  
14 of December 23rd, 2009, ask him that, did you receive help from  
15 anyone performing attendant care and household chores for you?

16 THE INTERPRETER: Yes, my daughters did that.

17 Q. Did your daughters provide both of those services to you?

18 THE INTERPRETER: Yes.

19 Q. Do you know the difference between household help and  
20 attendant care?

21 THE INTERPRETER: Yes.

22 Q. Please describe what household help services your  
23 daughters performed for you following the car accident.

24 THE INTERPRETER: They are doing all the chores which  
25 I used to do before the accident. Um, they walk the dogs out,

1 they clean the house, they clean the kitchen, they do the  
2 laundry, they mow the grass, they do snow removal.

3 Q. Because of your injuries from the car accident, are you  
4 capable of doing those things now?

5 THE INTERPRETER: No.

6 Q. What attendant care services did they provide to you?

7 THE INTERPRETER: Um, they help me, um, to do, um,  
8 shower. They help me to do the food. They help me to get  
9 dressed. They help me to sit down. They help me to get up in  
10 the morning. They help me to take medicine every day.

11 Q. Are you able to do those things for yourself or do you  
12 need their assistance?

13 THE INTERPRETER: I need help.

14 Q. Did any of your treating doctors write prescriptions for  
15 you to receive household help and attendant care?

16 THE INTERPRETER: Yes, Dr. Wietrzkowski and Dr.  
17 Glowacki.

18 Q. Regarding the household help services that your daughters  
19 performed for you, when did they start?

20 THE INTERPRETER: Practically the same day when the  
21 auto accident -- when the vehicle accident occurred.

22 Q. Do they continue to perform those services for you?

23 THE INTERPRETER: Yes.

24 Q. How many days per week?

25 THE INTERPRETER: Seven days a week.

1 Q. Did you pay them for these services or did you promise to  
2 pay them for these services?

3 THE INTERPRETER: Bashi I paid, Pashi I just promised  
4 that I would.

5 Q. How much did you promise for the household services?

6 THE INTERPRETER: Twenty dollars a day.

7 Q. For the attendant care, did you pay your daughters for  
8 these services or did you promise to pay them for these  
9 services?

10 THE INTERPRETER: Bashi I paid, Pashi I promised.

11 Q. How much did you promise to pay your daughter for the  
12 attendant care services that they provided to you?

13 THE INTERPRETER: Fifteen dollars per hour.

14 Q. How did you arrive at that number, at that amount?

15 THE INTERPRETER: Um, after the accident, when we  
16 went to the -- to my agent, he told us that such an amount --  
17 such an amount is, um -- is usually for this kind of service.

18 Q. And who is your agent?

19 THE INTERPRETER: David Rutger.

20 Q. How many days per week do your daughters perform the  
21 attendant care services for you?

22 THE INTERPRETER: Seven days a week.

23 Q. How many hours per day?

24 THE INTERPRETER: Twelve or more.

25 Q. Is that based upon doctor prescriptions?

1 THE INTERPRETER: Yes.

2 Q. Did your daughters keep track of the household help and  
3 attendant care services that they performed daily for you?

4 MR. HEWSON: Objection, foundation as to what the  
5 daughters did, Your Honor. That would be hearsay. He asked  
6 him what the daughters did, how the daughters kept track or  
7 what they were doing. I'm asking --

8 THE COURT: He said did your daughters keep track?

9 MR. HEWSON: And I'm objecting because of lack of  
10 foundation.

11 THE COURT: Overruled.

12 BY MR. TEMROWSKI:

13 Q. Go ahead, Mr. Waskowski.

14 THE INTERPRETER: Yes, they write it in the computer.  
15 Every day they make notes of what they're doing.

16 Q. Were those documents sent and submitted to State Farm?

17 THE INTERPRETER: Yes.

18 Q. Mr. Waskowski, did State Farm, in fact, pay you some  
19 no-fault benefits?

20 THE INTERPRETER: Um, they used to pay until  
21 November, 2010.

22 Q. What no-fault benefits did State Farm stop paying you in  
23 November of 2010?

24 THE INTERPRETER: Attendant care and household help.

25 Q. Okay. Did State Farm pay you wage loss benefits?

1 THE INTERPRETER: They paid until March of 2011.

2 Q. How much did State Farm pay you each month for wage loss  
3 benefits?

4 THE INTERPRETER: Two thousand nine hundred eighty  
5 dollars and eighty cents.

6 Q. Mr. Waskowski, did State Farm ask you to attend an  
7 examination with a doctor that they picked?

8 THE INTERPRETER: Yes.

9 Q. When did State Farm first ask you to go see one of their  
10 doctors?

11 THE COURT: Can I interrupt both of you at side-bar?  
12 (Whereupon a brief discussion was held off the  
13 record)

14 THE INTERPRETER: It was October the 1st, 2010 I got  
15 a letter from State Farm telling me that I'm supposed to go to  
16 the doctor.

17 Q. Did you go to the doctor?

18 THE INTERPRETER: Yes.

19 Q. What's the doctor's name?

20 THE INTERPRETER: Dr. Endress.

21 Q. How many times did you see Dr. Endress?

22 THE INTERPRETER: Once.

23 Q. After the examination with Dr. Endress, were you asked to  
24 see another doctor?

25 THE INTERPRETER: Yes.

1 Q. Who was the second doctor that you were asked to see?

2 THE INTERPRETER: I don't remember his name.

3 Q. Do you remember when it was?

4 THE INTERPRETER: Where?

5 Q. When, when?

6 THE INTERPRETER: In 2011.

7 Q. Okay. Did you go to that examination?

8 THE INTERPRETER: No.

9 Q. Now, Mr. Waskowski, are you -- we need to clarify this  
10 now, we need to clarify this.

11 MR. HEWSON: Your Honor, I'm going to object if he's  
12 going to try to impeach his own witness.

13 THE COURT: Just -- just let's just step back and  
14 relax. Go ahead and ask your question.

15 BY MR. TEMROWSKI:

16 Q. Okay.

17 THE INTERPRETER: He would like to add, he said he  
18 stated, "I didn't went to because the transportation was not  
19 provided."

20 BY MR. TEMROWSKI:

21 Q. Okay. Is that the doctor that you heard Ms. Kucharski  
22 talk about yesterday that she wanted you to go see and she said  
23 I told you not to go?

24 THE INTERPRETER: No.

25 Q. Mr. Waskowski, how many doctors did you actually go to at

1 the request of State Farm that examined you?

2 THE INTERPRETER: Two.

3 Q. Was there a doctor in between that Ms. Kucharski wanted  
4 you to go to and the transportation didn't show up?

5 MR. HEWSON: Your Honor, I'm going to object. It's  
6 leading.

7 THE COURT: Overruled.

8 THE INTERPRETER: Yes, Dr. George, I don't remember  
9 exactly the last name.

10 BY MR. TEMROWSKI:

11 Q. Did I ever tell you not to go to a doctor's examination?

12 THE INTERPRETER: No.

13 Q. Mr. Waskowski, in this lawsuit, in a federal courtroom,  
14 are you claiming that State Farm Mutual Automobile Insurance  
15 Company owes you any outstanding first-party no-fault benefits?

16 THE INTERPRETER: Yes.

17 Q. Let's start with medical bills. Do you have outstanding  
18 medical bills related to treatment to the December 23rd, 2009  
19 motor vehicle accident?

20 THE INTERPRETER: No.

21 Q. No. No.

22 THE INTERPRETER: Can you rephrase the question?

23 Q. Do you -- let's do this real slow. Do you presently have  
24 any outstanding medical bills related to injuries from the  
25 December 23rd, 2009 motor vehicle accident?



1 THE INTERPRETER: Yes.

2 Q. What are they?

3 MR. HEWSON: Your Honor, I'm going to object. The  
4 witness is looking at a piece of paper. Could I at least see  
5 that, see if it's an exhibit?

6 MR. TEMROWSKI: It's not an exhibit.

7 MR. HEWSON: May I see it?

8 MR. TEMROWSKI: Yes, you may.

9 MR. HEWSON: Thank you.

10 (Brief pause)

11 MR. HEWSON: Your Honor, this is not an exhibit. Um,  
12 could I just ask for foundation then of how this gentleman  
13 knows what he's about to testify to as to these bills?

14 THE COURT: Well, I think -- I think he's probably  
15 going to be reviewing something probably to refresh his  
16 recollection.

17 MR. TEMROWSKI: Exactly, Your Honor. I'll be more  
18 than happy to lay a foundation with Mr. Waskowski.

19 BY MR. TEMROWSKI:

20 Q. Mr. Waskowski, please tell us what -- what -- what is this  
21 binder that you have with you in court here today, what is  
22 that?

23 THE INTERPRETER: They are all my bills regarding the  
24 accident.

25 Q. Is that -- is that a document that you've been maintaining

1 and keeping track of since the very beginning of this matter?

2 THE INTERPRETER: Yes.

3 Q. And are these copies of documents that you've received and  
4 kept track of from State Farm?

5 THE INTERPRETER: Yes.

6 Q. And regarding the document that you were just referring  
7 to, Mr. Waskowski, did you, sir, prepare that document?

8 THE INTERPRETER: Yes, this particular document I  
9 produced on the basis of all documents which I received from  
10 the State Farm.

11 Q. Okay. And do you need to look at what you prepared to  
12 refresh your memory to answer these questions?

13 THE INTERPRETER: Yes.

14 Q. Okay. What are your outstanding medical bills?

15 MR. HEWSON: Your Honor, I object. We've already  
16 admitted into evidence Exhibits 1, 2 and 3 for the defendant  
17 relative to the request for the production of documents and  
18 interrogatories. This document, that binder were requested and  
19 they were never produced during the course of discovery and  
20 were not supplemented. I have never seen that binder or those  
21 documents at all and I asked for them over a year-and-a-half  
22 ago, or a year ago. I object to the foundation for this  
23 question.

24 MR. TEMROWSKI: This binder is simply what he's been  
25 keeping track of and this document he prepared to answer these

1 questions.

2 THE COURT: Um, why don't we have a side-bar.

3 (Whereupon a brief discussion was held off the  
4 record)

5 BY MR. TEMROWSKI:

6 Q. Mr. Waskowski, do you know what your outstanding medical  
7 bills are?

8 THE INTERPRETER: Yes.

9 Q. What are they?

10 THE INTERPRETER: About 40,000.

11 Q. And what is the breakdown for that? How does it break  
12 down, a total of 40,000, how does it break down?

13 THE INTERPRETER: Um, I've got all the letters from  
14 the medical institutions and, um, the letters stating that, um,  
15 State Farm haven't paid, um, the amount and, um, I summarize  
16 all the -- all the bills together.

17 Q. Okay. And how does the \$40,000 break down, who -- who --  
18 to who do you owe money to?

19 THE INTERPRETER: I owe Oakland MRI about 29,000.  
20 Can I use it?

21 Q. Yes, if you need that to refresh your memory.

22 THE WITNESS: Oakland MRI, 29,240; Dr. Glowacki,  
23 \$3,200; and Euro Rehab, 7,641.

24 Q. Thank you.

25 THE COURT: Euro is how much?

1 THE WITNESS: Euro?

2 THE COURT: Yes.

3 THE WITNESS: Seven thousand six hundred forty-one.

4 THE COURT: All right. And you said Dr. Glowacki is  
5 what, 3,000?

6 THE WITNESS: Three thousand two hundred.

7 THE COURT: And then Oakland MRI is what?

8 THE WITNESS: Twenty-nine thousand two hundred forty.

9 THE INTERPRETER: Twenty-nine thousand two hundred  
10 forty.

11 BY MR. TEMROWSKI:

12 Q. Mr. Waskowski, do you have an outstanding prescription  
13 expense?

14 THE INTERPRETER: Yes.

15 Q. How much?

16 A. One hundred eight.

17 Q. One hundred eight dollars?

18 A. Yes.

19 Q. Mr. Waskowski, do you have an outstanding wage loss claim  
20 that State Farm owes you?

21 THE INTERPRETER: Yes.

22 Q. How much is that?

23 A. Sixty-one thousand eighty-four dollars and eighty cents.

24 Q. Mr. Waskowski, is that calculated at the rate that State  
25 Farm was paying you per month before they cut you off?

1 THE INTERPRETER: Yes.

2 Q. Mr. Waskowski, do you have an outstanding household help  
3 claim?

4 THE INTERPRETER: Yes.

5 Q. How much is that?

6 A. Thirteen thousand nine hundred plus 1,900 different.

7 Q. And what is the \$1,900 difference?

8 THE INTERPRETER: It is the difference between --  
9 because State Farm at some period paid \$10 per hour -- per day,  
10 not 20.

11 Q. Okay. And if you add the \$13,900 to the \$1,900  
12 difference, what is your total household help claim?

13 A. Fifteen thousand eight hundred.

14 Q. Mr. Waskowski, do you have an outstanding attendant care  
15 claim?

16 THE INTERPRETER: Yes.

17 Q. How much is that?

18 A. One hundred thirty-two thousand nine hundred thousand --  
19 nine hundred eighty-six dollars.

20 Q. And Mr. Waskowski, how did you arrive at that figure?

21 THE INTERPRETER: State Farm stopped paying me 21st  
22 of November 2010 until the 26th of November 2012; it is  
23 695 days.

24 Q. Mr. Waskowski, could you please tell the ladies and  
25 gentlemen of the jury, because -- go that far -- Mr. Waskowski,

1     could you please tell the ladies and gentlemen of the jury,  
2     because of your injuries from the December 23rd, 2009 motor  
3     vehicle accident, what are your present complaints?

4             THE INTERPRETER:   Do you mean I'm out of money?

5     Q.   No, we've covered that.   I mean how do you feel?

6             THE INTERPRETER:   I am a completely different person  
7     than before the accident here.   I'm dependent on my daughters.  
8     Before the accident I was able to do everything by myself.   I  
9     took care of my family.   Right now the roles changed.

10    Q.   Take a minute if you need to.

11            THE INTERPRETER:   I am as a child.   I cannot even  
12   speak.

13    Q.   Mr. Waskowski, I know this is very difficult for you, I  
14   know that.   Take your time.   But I feel that it's very  
15   important for you to tell the jury in our proofs the problems  
16   that you're having, so take your time and do the best you can  
17   to tell us.

18            THE INTERPRETER:   At this moment I feel pain moving.  
19   When I move around, I feel pain.   Without the painkillers  
20   medicine, practically I cannot move around.   I'm not able to  
21   take care of myself.

22    Q.   Mr. Waskowski, here's my last question.   You are suing  
23   your old car insurance company, State Farm, for your no-fault  
24   benefits.   You testified that you were insured with State Farm  
25   for many years before the automobile accident.   How do you feel

1 about how your claim was handled?

2 MR. HEWSON: Your Honor, I'm going to object. That  
3 has no relevance whatsoever in this. This is an economic  
4 damages claim.

5 THE COURT: It's not relevant.

6 MR. HEWSON: Thank you.

7 MR. TEMROWSKI: Then I have no further questions of  
8 Mr. Waskowski.

9 THE COURT: Thank you very much. Mr. Hewson?

10 MR. HEWSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HEWSON:

13 Q. Mr. Waskowski, you understand what it means to tell the  
14 truth, right?

15 THE INTERPRETER: Yes.

16 Q. And you understand what it means to be under oath, is that  
17 right?

18 THE INTERPRETER: Yes.

19 MR. HEWSON: I'm technologically challenged, Your  
20 Honor. Hang on. Let me see if I can do this right. I just --  
21 would you put the screen up for me. I apologize, Your Honor.

22 THE COURT: No problem.

23 MR. HEWSON: It will just take a second. I'm going  
24 to use the Elmo so that the jury can see what I'm talking about  
25 because this gentleman doesn't speak English. Okay. Let's see

1 if I can do this and not mess it up. Oh, I can. Very good.  
2 Thank you. Thanks, Mark. Now you're getting tricky on me.  
3 I'm sorry, Your Honor,. There we go. That will be better. We  
4 can zoom in.

5 BY MR. HEWSON:

6 Q. All right. Mr. Waskowski, can you read English?

7 THE INTERPRETER: Partially.

8 Q. So, for example, your daughters didn't go to work with you  
9 when you worked at Yes Express; you went in and applied on your  
10 own and wrote out the application, right?

11 THE INTERPRETER: Yes.

12 Q. Yes. And you didn't take them to work with you, so you  
13 could speak to the people that you were working with and the  
14 people at the locations that you drove to, you were able to  
15 speak English with them?

16 A. Yes.

17 Q. Yes. Now, you just answered my question that I posed to  
18 you in English before the interpreter finished translating,  
19 didn't you?

20 THE INTERPRETER: Yes, I understand, but my English  
21 is limited, it's basic; it's enough to communicate.

22 Q. All right. Mr. Temrowski asked you how you came up with  
23 \$15 a day as the rate to pay your daughters for attendant care.  
24 Do you remember that question?

25 MR. TEMROWSKI: I'll object. That's not what the



1 question or the answer was.

2 MR. HEWSON: Actually it was.

3 THE COURT: Okay. Go ahead. The jury will recall.

4 MR. HEWSON: Thank you.

5 BY MR. HEWSON:

6 Q. Do you remember that?

7 THE INTERPRETER: Yes.

8 Q. Do you remember telling this jury that it was an agent  
9 from State Farm that told you \$15 an hour was the right charge,  
10 do you remember that?

11 THE INTERPRETER: Yes.

12 Q. Do you remember when I deposed you December the 28th, 2011  
13 that I said to you if I ask you a question and you answer it,  
14 I'm going to assume you understood me and you answered me  
15 truthfully. I said is that fair and you said yes. Do you  
16 remember being asked that question and giving that answer?

17 THE INTERPRETER: Yes.

18 MR. HEWSON: Your Honor, page 62, lines five through  
19 eight of Mr. Waskowski's deposition testimony.

20 BY MR. HEWSON:

21 Q. Sir, I asked you a specific question -- oops -- "How did  
22 you arrive at \$15 per hour as the price to pay your daughters  
23 for helping you with personal care?" And your answer under  
24 oath on December 28th, 2011 was, "When the insurance stopped  
25 paying me, then I went to my attorney and he told me the prices

1       that should be paid." Was that true when you said it to me?

2               THE INTERPRETER: Confirmed.

3       Q. Does that mean yes, that's what you told me under oath on  
4       that day?

5               THE INTERPRETER: Yes, he confirmed what the agent  
6       said, that my daughters supposed to have \$15 per hour.

7       Q. Okay. Why didn't you tell me that? Why didn't you say  
8       that under oath at your deposition?

9               THE INTERPRETER: Um, I -- I only wanted to say that  
10       my attorney confirmed the \$15 per hour, but the question was  
11       who told me there, who told me that.

12       Q. Yes. We had an interpreter present for your deposition,  
13       sir, didn't we?

14               THE INTERPRETER: Yes.

15       Q. Sir, when did you put together this binder that you've  
16       been putting together for the whole trial, when did you do  
17       that?

18               THE INTERPRETER: This binder I kept since I got  
19       first letter from the State Farm.

20               MR. HEWSON: On page 44, Your Honor, of the  
21       deposition of 12-28-2012.

22       BY MR. HEWSON:

23       Q. Sir, I asked you a question, "Do you know what your  
24       outstanding medical bills amount to?" And you said, "For my  
25       medicals?" And I said, "Yes." You said, "I might say I don't

1 know what the exact numbers are or the amount." You didn't  
2 have -- or did you have that binder with you put together  
3 before your deposition?

4 THE INTERPRETER: I didn't have it with me; it was at  
5 home.

6 Q. And you never produced that binder or any of those  
7 documents during this whole litigation, did you?

8 THE INTERPRETER: He's asking did I -- he's asking  
9 did I, um, prepare it particularly for today?

10 Q. Yes.

11 THE INTERPRETER: No.

12 Q. Did you ever -- did you ever send it to State Farm?

13 THE INTERPRETER: What did I send to State Farm?

14 Q. That book.

15 THE INTERPRETER: No.

16 Q. Thank you.

17 MR. HEWSON: Excuse me. There isn't a question, Your  
18 Honor. Can I ask that we wait until --

19 THE COURT: Sure.

20 MR. HEWSON: Thank you.

21 BY MR. HEWSON:

22 Q. Sir, I want to ask you about your wage loss claim. Did  
23 you do the calculations for the wage loss claim you want the  
24 jury to pay you, \$61,084.80, did you do that yourself,  
25 calculate it?

1 THE INTERPRETER: Yes, on the basis of --

2 THE WITNESS: Wage loss calculation worksheet.

3 THE INTERPRETER: On the basis of wage loss  
4 calculation work sheet.

5 BY MR. HEWSON:

6 Q. I understand that. But did you actually sit down and  
7 calculate or calculate with your attorney what your actual  
8 claims should be based upon the income tax returns, not what  
9 State Farm was based on but based on the income tax returns?

10 THE INTERPRETER: Are you asking me for this amount?

11 Q. Yes. Did you use your income tax returns to calculate the  
12 amount?

13 THE INTERPRETER: State Farm representative gather  
14 all the information regarding my salary for my work, Yes  
15 Express, and on the base of this he -- he calculated my  
16 average, um, monthly salary.

17 Q. Who did it?

18 A. Terri Page.

19 Q. Terri Page.

20 Did you -- you were here yesterday. You heard Terri  
21 Page say she never got income tax returns from you. Did you  
22 hear that?

23 THE INTERPRETER: They were sent, um, for the year  
24 2009, 2010 and 2011.

25 Q. Do you have a letter or any evidence that suggests that

1 you sent these to Ms. Kucharski or Ms. Page prior to the time  
2 they were produced in 2012 in this lawsuit?

3 THE INTERPRETER: Perhaps I have. I don't have -- I  
4 don't know now, but all the documents were sent by UPS so  
5 probably some were sent track of it.

6 Q. Okay. Let me ask you this. You don't want to be  
7 overpaid, right?

8 THE INTERPRETER: No, I don't.

9 Q. You only want to be paid what you're entitled to under the  
10 Michigan No-Fault Act and your policy of insurance, is that  
11 right?

12 THE INTERPRETER: Yes, what I'm supposed to.

13 Q. Okay. According to the income tax returns that you  
14 provided, which are marked as part of Exhibit 2 -- Your Honor,  
15 let's see if I can do this right -- you have indicated that you  
16 took in \$43,996 and you received after your deductions 25,933,  
17 right?

18 THE INTERPRETER: Yes.

19 Q. Okay. That's what you made for the year, right?

20 THE INTERPRETER: After deductions.

21 Q. After deductions.

22 THE INTERPRETER: Me as a truck driver driving out of  
23 state, um, I'm entitled to allowances for the food every day.

24 Q. Right. And you deduct --

25 THE INTERPRETER: So the sum is -- is -- is less than

1 for the -- the deduction, the same as every worker who is sent  
2 out of state that working, the employment is paying him for the  
3 food and hotel.

4 Q. I understand. And that wasn't the question. I did some  
5 arithmetic and I want to know if you will agree with me,  
6 \$25,933 is what you actually made in 2009, right?

7 THE INTERPRETER: No.

8 Q. No. So the income tax return that you filed is incorrect?

9 MR. TEMROWSKI: Your Honor, I'm going to object. The  
10 income tax is what it is.

11 MR. HEWSON: Well, I understand but I'm just using  
12 the number, Your Honor, for his net profit or loss. His  
13 business income is 25,933 and he testified to that.

14 THE COURT: Right.

15 MR. HEWSON: I don't understand the objection. I  
16 believe that that --

17 MR. TEMROWSKI: You're disregarding the \$43,000  
18 figure arriving at your calculation is how.

19 MR. HEWSON: Well, I guess the jury can figure that  
20 out.

21 BY MR. HEWSON:

22 Q. My question is were you honest with the IRS?

23 THE INTERPRETER: Yes.

24 Q. Okay. So if you made \$25,933 after you paid your expenses  
25 and all of that stuff and I divide that by 12 months of the

1 year, that's \$2,161.08 a month?

2 THE INTERPRETER: Actually will you repeat, 2000 --

3 Q. Sure. It's right there, 2161.08. If I -- you only get  
4 85 percent of that under the No-Fault Act, did you know that?

5 THE INTERPRETER: Yes.

6 Q. So the multiple -- the figure then that you would be paid  
7 is 1836.92 per month by State Farm, right?

8 THE INTERPRETER: I don't know.

9 Q. Okay. You said -- you told the jury you were getting  
10 \$2,908.80 per month from State Farm, and you actually  
11 remembered that number on your own, right?

12 THE INTERPRETER: Yes.

13 Q. And that means, if my numbers are right, that you got an  
14 extra \$1,071.88 per month for the 15 months you were paid, it  
15 was an extra \$16,000 you got that State Farm paid you, right?  
16 Yes?

17 THE INTERPRETER: No, I don't understand. If the  
18 State Farm -- State Farm agent calculated my salary on the base  
19 of my income. I didn't give it to him. He took it by himself,  
20 an agent took it by himself from my employer. So why should I  
21 base my calculation on a different calculation if -- from the  
22 beginning, State Farm, month-by-month -- it was not a  
23 calculation based on one month. It was calculation done for  
24 each month when they paid me. Okay. The lower amount of my  
25 income tax is -- it's -- the sum is smaller because I have to

1 pay for my food.

2 Q. Right.

3 THE INTERPRETER: And I have to provide it. I have  
4 to show it in the income tax. He's asking if you deduct the  
5 food from your income.

6 Q. Let me ask you this. You told me a moment ago, sir, that  
7 you don't want to be paid more than you're entitled to, right?

8 THE INTERPRETER: Yes. But in the situation when I  
9 would be employed in the State of Michigan as a driver and I  
10 don't go out of state, my income is \$43,000.

11 Q. Did you tell -- forget it.

12 MR. HEWSON: I'll withdraw it, Your Honor.

13 BY MR. HEWSON:

14 Q. Sir, yesterday Mr. Temrowski was asking you about this  
15 prior accident that you had in July of 2009. You remember  
16 that?

17 THE INTERPRETER: Yes, I remember.

18 Q. And you said you weren't injured in that accident?

19 THE INTERPRETER: No.

20 Q. You were not. Why did you stay off work for five days and  
21 let State Farm pay you wage loss?

22 THE INTERPRETER: Somebody called me from State Farm  
23 and asked me if I -- if I didn't attend work for a few days  
24 because of the accident. I told him that it took me five days  
25 because I went to hospital to check out if everything is okay



1 with me.

2 Q. So you were hurt?

3 THE INTERPRETER: Um, nothing really hurt but I  
4 wanted to make sure that -- because I'm a truck driver and I  
5 leave state, I'm going out of state, so I wanted to make sure  
6 that everything is okay with me.

7 Q. So you took five days worth of wage loss from State Farm  
8 in July of 2009 when you weren't hurt?

9 THE INTERPRETER: I didn't require any payments. It  
10 was all done by phone and the State -- the State Farm agent  
11 asked me if the five, six hundred would be okay to have it. I  
12 didn't require it; they told me.

13 Q. Did you complain about your left shoulder at the emergency  
14 room in July of 2009? Could you just translate that for me  
15 please?

16 THE INTERPRETER: The form he used, it's not  
17 translatable. Small pain.

18 Q. You had small pain your left shoulder and you told them  
19 that at the emergency room, didn't you?

20 THE INTERPRETER: Yes, because this accident also  
21 happened from the left side I was hit. I don't understand why,  
22 if somebody hit me on the left side, why I supposed to complain  
23 that right side hurt.

24 Q. You also -- your attorney asked you about lawsuits. You  
25 sued the person that was involved in the accident with you,

1 right, in this case?

2 THE INTERPRETER: Do you mean the accident which  
3 occurred, December 2009?

4 Q. Yes.

5 THE INTERPRETER: Yes.

6 Q. And you filed suit against State Farm in a separate case  
7 for your medical mileage, right?

8 THE INTERPRETER: For medical mileage?

9 Q. That's correct.

10 THE INTERPRETER: But I don't see relevance.

11 Q. Okay. Thank you. Um, did Dr. Wietrzkowski -- excuse me,  
12 he said you didn't need any assistance with driving. Did you  
13 know that?

14 THE INTERPRETER: No.

15 Q. Okay. So you didn't see the form in which Dr.  
16 Wietrzkowski said he was not restricting you from driving, you  
17 never saw that?

18 THE INTERPRETER: No, I didn't see it.

19 Q. Did you see -- Mr. Temrowski showed you the police report  
20 in this matter. Do you remember that?

21 THE INTERPRETER: I remember the report but I don't  
22 remember exactly what's in the report.

23 Q. Okay. Maybe I can help you. Whoa, there we go. The  
24 police report says that there's zero injury to you. You never  
25 told anybody you were injured at the scene, did you?

1 THE INTERPRETER: During the accident?

2 Q. All right. Let's do it this way. The police came to the  
3 scene of the accident, yes or no?

4 THE INTERPRETER: Yes.

5 Q. And the police got out of their police car and you were  
6 out of your car and they tried to talk to you, right?

7 THE INTERPRETER: Police -- a policeman helped me to  
8 get out of my car.

9 Q. Do you have sufficient English capability to say to the  
10 policeman "I'm hurt"?

11 THE INTERPRETER: Yes, my English is sufficient  
12 enough, but this policeman never asked me about it. I talked  
13 to the policeman maybe about for a half of a minute, and he  
14 went to the -- the policeman went to the -- another vehicle  
15 which was also damaged.

16 Q. There was an ambulance at the scene, am I right?

17 THE INTERPRETER: Yes.

18 Q. Did you ask the ambulance drivers to take you to the  
19 hospital?

20 THE INTERPRETER: The ambulance crew took care of the  
21 different people in the different vehicle and nobody asked me.  
22 My car was on the different side of the road and it was in the  
23 parking of the flower shop and it looked like my vehicle didn't  
24 participate in this accident.

25 Q. The air bag didn't go off, did it? Did the air bag go

1 off, yes or no?

2 THE INTERPRETER: So why my medical test show that?

3 Q. We're going to talk about that, I assure you. At this  
4 particular point I'm asking you whether or not the air bag went  
5 off in your car, yes or no please.

6 THE INTERPRETER: No, it didn't explode.

7 Q. Your daughters were both at the scene while the police  
8 were there, am I right, yes or no?

9 THE INTERPRETER: Yes, they were.

10 Q. And the ambulance was there while your daughters were  
11 there as well, am I right?

12 THE INTERPRETER: Yes.

13 Q. You didn't have your daughters even take you to an  
14 emergency room after the police and the ambulance left, did  
15 you?

16 THE INTERPRETER: It happened the day before  
17 Christmas and for us Polish people it's a specific day, an  
18 important day.

19 Q. Okay. I don't understand. Is it your understanding that  
20 emergency rooms are closed on Chris -- actually it's the day  
21 before Christmas Eve. That was December 23rd, right? He got  
22 it, he's got it. "Tak" means yes, right?

23 A. Yes.

24 Q. Okay. So you know emergency rooms are open.

25 THE INTERPRETER: Yes, but I were in shock. I didn't

1 think logically about it. I was driving to the -- to do  
2 shopping in the Polish store. I wanted to spend Christmas  
3 holidays with my family because from the Polish tradition, the  
4 Christmas holidays take three days.

5 Q. Okay. All right. Would you agree with me that if you  
6 were really hurting that bad, if you couldn't move your left  
7 arm, couldn't rotate your head to the left or right, couldn't  
8 bend over at all, that would cause you sufficient concern to go  
9 to the hospital, can you answer that?

10 THE INTERPRETER: I thought it would pass away.

11 Q. Okay. Now, Dr. Wietrzkowski, when you finally went to see  
12 him, indicated that you didn't need attendant care. Did you  
13 know that?

14 THE INTERPRETER: He stated that I do need it.

15 MR. HEWSON: It's my Defendant's Exhibit No. 8, Your  
16 Honor. Oops.

17 BY MR. HEWSON:

18 Q. "Does Mr. Waskowski require any attendant care services  
19 such as supervision, assistance with bathing, grooming,  
20 dressing, et cetera?" The answer is, "No. May require  
21 assistance with some household chores as listed above." He  
22 said you didn't need attendant care.

23 THE INTERPRETER: I haven't seen that document. I  
24 don't know about it.

25 Q. Okay. Actually the reason you went to --

1 THE INTERPRETER: But Dr. Wietrzkowski told me that I  
2 do need attendant care.

3 Q. Dr. Wietrzkowski also said in that report that you can  
4 return to work January 23rd, 2010. Did you know that?

5 THE INTERPRETER: It was determined on another visit,  
6 it was the date of another visit.

7 Q. Well, you never went back.

8 THE INTERPRETER: Yes, because Dr. Wietrzkowski  
9 didn't speak Polish and my English is not sufficient enough to  
10 spoke to a doctor -- speak to the doctor about medical  
11 measures.

12 Q. Now, I thought your daughters went to all your medical  
13 appointments with you and could interpret Polish to English and  
14 English to Polish. Am I wrong?

15 THE INTERPRETER: Yes, perhaps, but, um, my  
16 daughter -- but I didn't know what kind of medical condition I  
17 have and sometimes, you know, this type of translations are not  
18 accurate.

19 Q. Even when your daughters are doing it for you?

20 THE INTERPRETER: My daughter already forgot Polish,  
21 Pashi. She came to United States at age 13 and they are not --  
22 they are not sufficient in medical field vocabulary in Polish.

23 Q. Actually you found a doctor who would write prescriptions  
24 for you for 12 hours a day of attendant care, take you off work  
25 permanently and write you all the prescriptions that you

1 wanted, that's what you found and that's what you got, am I  
2 right?

3 THE INTERPRETER: I took this doctor from -- I chose  
4 this doctor from Yellow Book. I don't know if Yellow Book  
5 indicates if he writes prescription or what he does, I don't  
6 know about it. I just found him in the Yellow Book.

7 Q. Sir, did you tell the physical therapist the first time  
8 you saw him that you couldn't move your left arm?

9 THE INTERPRETER: Yes.

10 Q. You told him that you couldn't move it at all, right?

11 THE INTERPRETER: I have limited mobility.

12 MR. HEWSON: Your Honor, this is page 39, lines nine  
13 through 14.

14 BY MR. HEWSON:

15 Q. I asked the question, "Sir, you told the physical  
16 therapist and showed the physical therapist that you could not  
17 move your left arm at all?" And you said, "Yes. First before  
18 I started physical therapy, he performed a test on me, and  
19 after the test he realized -- he said what kind of treatment,  
20 what kind of exercises I can do." You told him and you showed  
21 him, according to your testimony, that you couldn't raise your  
22 left arm at all, right?

23 THE INTERPRETER: I -- do I have to read this?

24 Q. No, just ask him.

25 THE INTERPRETER: Yes, but Pashi was asked so, um,

1 can I just come to the -- to see close?

2 Q. No, you don't have to. My question is very simple.

3 THE INTERPRETER: Yes. What's your question?

4 Q. Did you tell the physical therapist that you couldn't move  
5 your left arm at all?

6 THE INTERPRETER: Yes, I told him that I have limited  
7 mobility.

8 Q. All right. You sat here in the courtroom when the  
9 physical therapist testified as to how far you could move your  
10 arm. Were you here for that?

11 THE INTERPRETER: I haven't shown anything.

12 Q. Were you here though?

13 THE INTERPRETER: Yes, I was there.

14 Q. And the physical therapist said you could move your arm,  
15 left arm, this high, was that true?

16 THE INTERPRETER: Um, I don't know what physical  
17 therapist stated in the report. I am a patient.

18 Q. Okay. Well, when you first went to see the physical  
19 therapist, could you raise your arm this high?

20 THE INTERPRETER: No.

21 Q. So when you saw the physical therapist the first time,  
22 could you raise your elbow like this and bend your arm?

23 A. No.

24 THE INTERPRETER: I demonstrated during my deposition  
25 how high I can lift my arm.



1 Q. I remember that.

2 A. Yeah.

3 Q. But my question was -- I know. But my question was you're  
4 telling this jury under your oath that you couldn't do those  
5 two maneuvers that the physical therapist said you could do,  
6 right?

7 THE INTERPRETER: No, I cannot move.

8 Q. Okay. Why did you go to a doctor at all?

9 THE INTERPRETER: Because I felt really bad.

10 Q. What did you expect to get out of a doctor's visit?

11 THE INTERPRETER: I don't know. I didn't know then.

12 Q. You didn't know. You didn't go to a doctor to get better?

13 THE INTERPRETER: Yes, but I am a patient and I don't  
14 know what doctor will do.

15 Q. Okay. Why didn't you go to U of M or Saint John's or  
16 Beaumont or somewhere when you didn't get better, let's say,  
17 after just a year, why didn't you go somewhere else?

18 THE INTERPRETER: Because after last auto accident in  
19 July, I was waiting five hours in emergency room to see a  
20 doctor to do the basic check-up, and I went to the doctor on  
21 the appointment and I didn't have to wait.

22 Q. So it was a question -- sir, you weren't doing anything  
23 anyway according to you, right? You were totally disabled and  
24 completely didn't have anything else to do because you're so  
25 hurt.

1 THE INTERPRETER: Yes.

2 Q. But you couldn't wait?

3 THE INTERPRETER: After the accident, I couldn't do  
4 anything during rest of the Christmas. All the preparation for  
5 Christmas did by my daughters.

6 Q. Okay. There's been some testimony about a second opinion  
7 from Dr. Donahue. Did you ever do what Dr. Donahue suggested?

8 THE INTERPRETER: No.

9 Q. Did you review the forms that your daughters were filling  
10 out for attendant care before they sent them in?

11 THE INTERPRETER: No, it's not my job to do so. They  
12 know what they are doing so they put the notes.

13 Q. How long did it take them to bathe you when they were  
14 bathing you?

15 THE INTERPRETER: It's the bath, there are different  
16 days.

17 Q. How long?

18 THE INTERPRETER: They're about the same time.

19 Q. Well, they billed State Farm the same time every time they  
20 bathed you, did you know that?

21 THE INTERPRETER: Yes. But my shower also -- my,  
22 um -- my bath also includes shaving and grooming, to dry, to  
23 get dressed, undressed, dressed. But you asked how long the  
24 shower takes, um, and the shower, my understanding is exact  
25 time when I am under -- in the shower.

1 Q. You're right-handed, correct? You can't shave with your  
2 right hand?

3 THE INTERPRETER: Yes, but they help me, my daughters  
4 help me with that.

5 Q. You were unable to bathe yourself for six months after the  
6 accident, is that true?

7 THE INTERPRETER: I take a shower every day, but  
8 after the accident -- I am a man, even father is ashamed of, so  
9 I try to do the shower myself, but I couldn't do it. That's  
10 why my daughters help me.

11 Q. On December 28th, 2011 --

12 MR. HEWSON: Your Honor, this is page 37 of the  
13 deposition --

14 BY MR. HEWSON:

15 Q. -- I asked you, "Are you any better?" And you said,  
16 "Yes."

17 THE INTERPRETER: Yes.

18 Q. "What can you do for yourself?" And you said, "What can I  
19 do?" I said, "Yes." And you said, "Sit down. Sometimes, with  
20 the help of other persons, stand up." I said, "That's it?"  
21 You said, "Go to the restroom moving." And I asked you, "Can  
22 you bathe yourself?" And you said, "Yes." Is that true?

23 THE INTERPRETER: Take a bath, yes, which means  
24 sitting in the bathtub, not to take a shower.

25 Q. Okay. So you could sit in the bath by yourself and clean

1 your body in the bath by yourself, yes?

2 THE INTERPRETER: Somebody has to help me to sit  
3 down.

4 Q. But you could -- was that true, you could bathe yourself,  
5 yes or no?

6 THE INTERPRETER: No, I cannot do it by myself. I  
7 need to have help during the bath. I have to -- how can I do  
8 it with right hand?

9 Q. Did you say that? Just tell us -- did you say that? Were  
10 you -- did you intend to tell the truth in December the 28th of  
11 2011 when I asked you that question?

12 THE INTERPRETER: I tried to tell all the truth but,  
13 um, sometimes the questions are prepared this way. Then  
14 sometimes I -- person doesn't know how to answer it, what to  
15 say.

16 Q. Oh. Do you remember if I said to you at the beginning of  
17 your deposition, "If I ask you a question" --

18 THE INTERPRETER: One second. Yes?

19 MR. HEWSON: Let me just put it up. Your Honor, page  
20 seven, lines nine through 13.

21 BY MR. HEWSON:

22 Q. I said to you, sir, "If I ask you a question that you  
23 don't know the answer to, I want you to feel free to tell us  
24 you don't know. I don't want you to guess, all right?"

25 I also asked you, "If I ask you" -- or told you, "If

1 I ask you a question that is confusing or unclear, I need you  
2 to stop us, tell us that, and we'll rephrase it and have it  
3 reinterpreted so you do understand it, is that all right?" And  
4 you said, "That's good."

5 THE INTERPRETER: Yes, I remember this. But I also  
6 remember that my daughter had to -- had to correct interpreter  
7 because some mistakes.

8 Q. Let me ask you this. Tell us what was so complicated  
9 about the question, "Can you bathe yourself?"

10 THE INTERPRETER: It's not complicated questions, but  
11 for me it's a difference between taking a shower and taking a  
12 bath.

13 Q. All right. "Have you been able to bathe yourself since  
14 the accident happened at the beginning?" "No." "How long were  
15 you unable to bathe yourself?" "Around six months." And I  
16 asked you if you take baths or do you shower? You said, "Yes,  
17 shower." You didn't tell me you were taking baths, did you?

18 THE INTERPRETER: I don't know what to say.

19 Q. I understand.

20 THE INTERPRETER: I know -- I know that -- I know the  
21 fact that my daughters always help me. They were with me all  
22 the time. When I'm taking a shower, I try to do as much as  
23 possible by myself but they are helping me. They are not  
24 bathing me but they are helping me.

25 Q. Did you ever ask Dr. Glowacki to prescribe for you

1 anything that would help you bathe or shower by yourself?

2 THE INTERPRETER: Yes, I did ask.

3 Q. What did he give you?

4 THE INTERPRETER: He suggested some kind of railing.

5 Q. When?

6 THE INTERPRETER: Um, now, in 2012.

7 Q. So you didn't ask him in 2010 or 2011 and you didn't ask  
8 him up until the time of trial to help you get yourself bathed  
9 instead of involving your daughters in that, right?

10 THE INTERPRETER: Back then I felt much better. I  
11 had a physical therapy and which helped me to maintain the  
12 mobility and I could do much more than I can do right now.

13 Q. Back then when you were treating at Euro Rehab, you felt  
14 well enough to shower yourself, yes? Yes?

15 THE INTERPRETER: Not hundred percent.

16 Q. Well, 80 percent?

17 THE INTERPRETER: It's difficult to state.

18 Q. Difficult to state.

19 You didn't need -- you didn't need your daughters  
20 helping you bathe for an hour every day when you were going to  
21 physical therapy, according to your own testimony, isn't that  
22 true?

23 THE INTERPRETER: I need my daughters to help me  
24 every day with basics and I don't know how much time it would  
25 take. I don't have a stopper or some kind of specific watch to

1 measure the time.

2 Q. Your daughter Kamila said that before the accident it took  
3 you ten minutes to take a shower, is that true?

4 THE INTERPRETER: It depends on the day; 10,  
5 15 minutes.

6 Q. She said after the accident you bathed yourself and  
7 showered yourself for six months and it only took you  
8 20 minutes to do that.

9 THE INTERPRETER: No, it's not true.

10 Q. So what Kamila testified to was not true?

11 THE INTERPRETER: I don't know what she testified.

12 Q. You were sitting here.

13 THE INTERPRETER: But she --

14 Q. Wait.

15 THE INTERPRETER: Twenty minutes is just a shower,  
16 but preparation, shaving.

17 Q. She said you didn't need any help for six months. Was she  
18 wrong about that too?

19 THE INTERPRETER: I did need help during the time.

20 Q. And for six months?

21 THE INTERPRETER: From the exact moment of the  
22 accident until today.

23 Q. Do you have any idea why Kamila billed State Farm at least  
24 an hour for bathing you in the first six months after the  
25 accident when she didn't believe that you were being bathed in

1       that time?

2               THE INTERPRETER: I don't understand the question.

3       Q.    Okay. Thanks.

4               MR. HEWSON: Thank you, Your Honor. I have nothing  
5       else.

6               THE COURT: Redirect?

7               MR. TEMROWSKI: Very briefly. Could you leave that  
8       on please?

9               MR. HEWSON: Sure.

10              MR. TEMROWSKI: And if I could please see Exhibit 8  
11       and that police report.

12              MR. HEWSON: Sure. I think you have the police  
13       report but I'll give you the one I was using.

14              MR. TEMROWSKI: Okay. And that first document, the  
15       deposition about the \$15 per hour.

16              MR. HEWSON: Sure. Hang on.

17              MR. TEMROWSKI: Take your time.

18              MR. HEWSON: Here's Exhibit 8 and there's the police  
19       report, there you go. I didn't know I was going to clerk for  
20       you today.

21              MR. TEMROWSKI: Well, I just want to be accurate.

22              MR. HEWSON: That's great. Me too. Here we go.

23              MR. TEMROWSKI: Okay. Thanks.

24              MR. HEWSON: You're welcome.

25                               REDIRECT EXAMINATION



1 BY MR. TEMROWSKI:

2 Q. Mr. Waskowski, you were asked a question about how you  
3 arrived at the \$15 per hour that you promised for the attendant  
4 care -- I'm going too fast?

5 THE INTERPRETER: Yes.

6 Yes.

7 Q. And you testified that the State Farm agent provided you  
8 with that dollar amount?

9 THE INTERPRETER: Yes, together with the first form  
10 to apply.

11 Q. And Mr. Hewson questioned you about your testimony from  
12 your deposition which we have up here, and it states, "When the  
13 insurance stopped paying me, then I went to my attorney and he  
14 told me the prices that should be paid," right?

15 THE INTERPRETER: He confirmed.

16 Q. Right. Because you didn't have an attorney when you first  
17 made these claims with State Farm, did you?

18 THE INTERPRETER: No, I didn't have any.

19 Q. And you saw the attorney who confirmed it when the  
20 insurance stopped paying, is that right?

21 THE INTERPRETER: Yes, I went to see a lawyer in  
22 March 2011 when -- or maybe February 2011 when the insurance  
23 company stopped to pay my wages.

24 Q. Regarding that binder that Mr. Hewson asked you about, you  
25 indicated to him what's in it. And Mr. Hewson asked you why

1 didn't you send those documents to State Farm. Are the  
2 documents that you have in that binder the documents that you  
3 received from State Farm?

4 THE INTERPRETER: Yes, they are all documents which I  
5 received from State Farm so why -- why do I supposed to send  
6 the documents to State Farm if I received them from State Farm?

7 Q. Next question, about your wage loss and the calculations,  
8 you provided your income tax returns to State Farm, didn't you?

9 MR. HEWSON: Objection, leading, Your Honor.

10 THE COURT: It is leading.

11 BY MR. TEMROWSKI:

12 Q. Did you -- did you provide your income tax returns to  
13 State Farm?

14 THE INTERPRETER: Yes, I mailed it to State Farm.

15 Q. And they paid you wage loss, correct?

16 THE INTERPRETER: Yes.

17 Q. If State Farm's contention now is true, that they somehow  
18 overpaid you wage loss benefits, did State Farm ever ask for  
19 any of the money back from you?

20 THE INTERPRETER: No.

21 Q. When the accident occurred, were you alone in the car?

22 MR. HEWSON: Objection. This is outside the scope,  
23 Your Honor.

24 MR. TEMROWSKI: No, no, I'm -- it will be within the  
25 scope.

1 THE COURT: Well, the fact -- the question that  
2 you've asked is outside the scope.

3 MR. HEWSON: Thank you.

4 BY MR. TEMROWSKI:

5 Q. Remember you were asked questions about that police  
6 report?

7 THE INTERPRETER: Yes.

8 Q. And you were asked if -- because it says zero injury on  
9 that report, and you testified that the officer never asked you  
10 if you were injured.

11 THE INTERPRETER: He didn't ask.

12 Q. So if it says zero injury, that would be incorrect?

13 MR. HEWSON: Your Honor, I'm going to object. It's  
14 argumentative and leading.

15 THE COURT: The objection is what?

16 MR. HEWSON: I'm sorry, Your Honor. I couldn't see  
17 by the screen. It's argumentative and leading. He's telling  
18 the witness what the police officer meant when he put that on  
19 there.

20 THE COURT: It would be leading.

21 MR. HEWSON: Thank you.

22 BY MR. TEMROWSKI:

23 Q. You were asked questions about why you stopped treating  
24 with Dr. Wietrzkowski, because he didn't speak Polish?

25 THE INTERPRETER: Yes.

1 Q. Your testimony was he didn't and I sought out a doctor  
2 that did. And Mr. Hewson asked you, well, why didn't your  
3 daughters serve as interpreters? Was it your decision to  
4 switch doctors because you -- you felt more comfortable  
5 speaking to your doctor in Polish?

6 THE INTERPRETER: Yes, it was my decision. And  
7 before the first -- before we made the first appointment for  
8 the visit, we asked the question if the doctor speaks Polish.

9 Q. And you were asked about why you saw Dr. Glowacki. And  
10 Mr. Hewson said, "Oh, Mr. Waskowski, you sought him out because  
11 you knew he would disable you and write scripts." Had you ever  
12 been to Dr. Glowacki before?

13 THE INTERPRETER: No, I never visited. Before the  
14 accident I never went to any doctor, I was never sick, besides  
15 this one-time check-up after the accident which took place in  
16 July 2009.

17 Q. And then Mr. Hewson asked you, well, if you weren't  
18 getting any better, why didn't you go to U of M or Saint John  
19 Hospital? Isn't it true that your treating doctor, Dr.  
20 Glowacki -- isn't it true that your treating doctor, Dr.  
21 Glowacki, did, in fact, send you for two second opinions to Dr.  
22 Zammerano and Dr. Donahue? Dr. Zammerano and Dr. Donahue?

23 THE INTERPRETER: Dr. Zammerano confirmed --

24 MR. HEWSON: Your Honor, I'm going to object to what  
25 Dr. Zammerano said. She's not a witness in this matter. It's

1 hearsay.

2 THE INTERPRETER: I'm just interpreting.

3 THE COURT: It is hearsay. It wasn't a question that  
4 you asked.

5 BY MR. TEMROWSKI:

6 Q. No. The question was didn't Dr. Glowacki send you for two  
7 second opinions to Dr. Zammerano and Dr. Donahue?

8 THE INTERPRETER: Yes, Dr. Glowacki sent me to get a  
9 second opinion from Dr. Zammerano and Dr. Donahue.

10 Q. And then do you remember you testified about Dr.  
11 Wietrzkowski also prescribing attendant care, remember that?

12 THE INTERPRETER: Yes.

13 Q. And Mr. Hewson put a part of Dr. Wietrzkowski's record up  
14 to show you? And on the next page, actually page four, it  
15 says, "For what medical reason does Mr. Waskowski require the  
16 above attendant care services?" Answer, "Yes." "And how much  
17 time per day does Mr. Waskowski require attendant care for each  
18 service you have listed?" "Six to eight hours per day."  
19 Correct?

20 A. Yes, it's correct.

21 Q. And then lastly, you were asked about bathing and Kamila  
22 and whether or not Kamila may or may not have bathed you.  
23 Weren't your two daughters working as a care provider team?

24 THE INTERPRETER: Yes, they, um -- they switched.

25 Q. So if Kamila didn't do it, Margaret would do it?

1 MR. HEWSON: Your Honor, I'm going to object. That's  
2 leading.

3 BY MR. TEMROWSKI:

4 Q. So if Kamila wouldn't do it, who would do it?

5 THE INTERPRETER: Margaret.

6 Q. Thank you. I have nothing else.

7 THE COURT: Okay. Recross?

8 MR. HEWSON: One very specific thing.

9 RECROSS-EXAMINATION

10 BY MR. HEWSON:

11 Q. Sir, did you tell this jury a moment ago that you didn't  
12 see Mr. Temrowski until 2011?

13 THE INTERPRETER: Would you repeat the name, last  
14 name?

15 Q. Mr. Temrowski?

16 THE INTERPRETER: I apologize, it's just a long day.

17 Q. I understand. Let me redo it.

18 MR. HEWSON: Yes please.

19 Q. That's fine. Did you tell Mr. Temrowski that you did not  
20 see him until 2011?

21 THE INTERPRETER: Yes.

22 Q. You billed State Farm for mileage to see Mr. Temrowski  
23 March 15th of 2010. Did you know that?

24 MR. TEMROWSKI: Well, Your Honor, first I'm going to  
25 object because mileage is not --

1 THE COURT: That's not the issue.

2 MR. TEMROWSKI: That is not the issue in this case.

3 THE COURT: No, no, no, that's not the issue behind  
4 the question.

5 MR. HEWSON: That's correct.

6 THE COURT: Goes to credibility.

7 MR. HEWSON: Thank you.

8 May I approach the witness briefly, Your Honor? I  
9 just want to show him this document.

10 THE COURT: To refresh his recollection?

11 MR. HEWSON: Yes.

12 BY MR. HEWSON:

13 Q. That's your signature. Says March 15th, 2010 you went to  
14 Mr. Temrowski's office. You had Mr. Temrowski on this file  
15 within three months after the accident happened, didn't you?

16 THE INTERPRETER: Mr. Temrowski -- Mr. Temrowski took  
17 care of the legal -- can you repeat it? Mr. Temrowski was  
18 leading a case.

19 Q. Let me ask it this way and the answer is yes or no. He  
20 was your lawyer in March of 2010?

21 THE INTERPRETER: He was needing lawyer for the first  
22 time.

23 THE COURT: It's really a direct question.

24 MR. HEWSON: Thank you, Your Honor.

25 THE COURT: Ask it again.

1 BY MR. HEWSON:

2 Q. No, was Mr. Temrowski your lawyer in March of 2010, yes or  
3 no?

4 THE INTERPRETER: 2010?

5 Q. Yes, ma'am.

6 THE INTERPRETER: Yes, because --

7 Q. The answer was yes?

8 THE INTERPRETER: -- because of different legal case.

9 MR. HEWSON: Okay. Thank you, Your Honor, for your  
10 time I have nothing further.

11 THE COURT: Okay.

12 MR. TEMROWSKI: Your Honor, I feel I need to clarify.

13 THE COURT: No. I mean you -- the issue was brought  
14 up during your examination and he asked questions on it. All  
15 right. You may step down. There's no re-redirect. Thank you  
16 very much. You may step down.

17 (Whereupon the witness was excused at 12:43 p.m.)  
18 okay.

19 THE COURT: Any other witnesses?

20 MR. TEMROWSKI: No other witnesses.

21 THE COURT: Does the plaintiff rest?

22 MR. TEMROWSKI: Well, before resting, I'd like to  
23 move for the admission of --

24 THE COURT: Sure.

25 MR. TEMROWSKI: -- exhibits. Plaintiff's Exhibit A,



1 which is the police report; Exhibit B, which is the photos from  
2 the car, Exhibit Q which is the Certificate of No-Fault  
3 Insurance; Exhibit D, which is Dr. Donahue's narrative report;  
4 and then Exhibit C, which is the repair estimate to the  
5 vehicle.

6 MR. HEWSON: If those are the Plaintiff's Exhibits,  
7 Your Honor, I'll withdraw my objection to Exhibit C.

8 THE COURT: All right. So there's no objection to  
9 Plaintiff's A, B, C and D?

10 MR. HEWSON: Correct.

11 THE COURT: As well as Q.

12 MR. HEWSON: None for Q, Judge.

13 THE COURT: All right. And is that the extent of  
14 your motion?

15 MR. TEMROWSKI: Yes.

16 THE COURT: All right. Plaintiff's motion as to A,  
17 B, C, D and Q is granted.

18 So there's no motion as to K or R, is that correct?

19 MR. HEWSON: That's correct.

20 MR. TEMROWSKI: Well, then I'll move for the  
21 admission of K also.

22 MR. HEWSON: Your Honor, I objected at the time. I  
23 don't believe there's any foundation from the testimony as to  
24 that particular prescription, but the Court heard Dr.  
25 Glowacki's testimony and there is no claim for damages for home

1 modifications. I don't see the relevance. That's why I  
2 objected in the first place.

3 MR. TEMROWSKI: Well, there is no claim for home  
4 modifications, that's true. But the question was asked if Dr.  
5 Glowacki ever prescribed home modifications, and Mr.  
6 Waskowski -- Waskowski indicated that he did this year, which  
7 is verified by this.

8 MR. HEWSON: That's why I objected, Your Honor. It's  
9 not relevant. There's no claim for it.

10 THE COURT: Yeah, there's no claim for it, but I  
11 could just see overall it may be relevant.

12 MR. HEWSON: Yes, sir.

13 MR. TEMROWSKI: Okay. Thank you.

14 THE COURT: All right. So it's received. Okay.  
15 Does the plaintiff rest?

16 MR. TEMROWSKI: Yes, Your Honor.

17 THE COURT: All right. I need you to go back in the  
18 jury room for a quick minute, okay?

19 THE CLERK: All rise.

20 THE COURT: And when I call you out, I'm going to  
21 pose this question to Mr. Hewson. I'm going to ask Mr. Hewson,  
22 do you wish to present a case on behalf of State Farm? He has  
23 two options, he may present a case or he may not, okay?

24 (Whereupon the jury was excused at 12:47 p.m.)

25 THE CLERK: Please be seated.

1 THE COURT: I assume you have a motion.

2 MR. HEWSON: I do, Your Honor.

3 THE COURT: Okay. Let me -- oh, I have it here. And  
4 it's oral?

5 MR. HEWSON: Yes, Your Honor.

6 THE COURT: It's not written?

7 MR. HEWSON: No, sir.

8 THE COURT: Okay.

9 MR. HEWSON: It's supported by the trial brief, which  
10 I know the Court has read. But it basically breaks down as  
11 simply as I can make it, first of all, the Oakland MRI bill is  
12 not supported by any competent medical evidence related to the  
13 automobile accident. Dr. Zammerano is the doctor that ordered  
14 that.

15 THE COURT: What about the testimony of Dr. Glowacki?  
16 And, of course, the standard is is that if, under Rule 50, the  
17 parties have been fully heard on an issue during a jury trial  
18 and the Court finds that a reasonable jury would not have a  
19 legally sufficient evidentiary basis to find for the party on  
20 that issue, the Court may obviously grant a motion for  
21 judgment.

22 And, of course, the issue is the directed verdict may  
23 only be granted if, after viewing the evidence in the light  
24 most favorable to the party opposing the verdict, directed  
25 verdict, of course I would imagine is the plaintiff, reasonable

1 minds cannot differ on the question of material facts. And, of  
2 course, the issue is -- would be whether or not claim for  
3 first-party benefits that have been made in this case are  
4 reasonably necessary.

5 MR. HEWSON: Yes, sir. Very briefly, nowhere in Dr.  
6 Glowacki's testimony did he say that that second MRI was  
7 reasonable, necessary or ordered by him and, in fact, his claim  
8 was that it showed healing for Mr. Waskowski.

9 THE COURT: So your motion is limited only to the  
10 second MRI?

11 MR. HEWSON: Yes. At this particular point -- well,  
12 yes, Your Honor -- you know, I understand. The only thing -- I  
13 had wanted to include Dr. Glowacki's testimony but I could see  
14 where the Court would say, well, we're going to let the jury do  
15 it, although my major concern with him is when he says to  
16 the -- to Your Honor and to the jury that, "I make up the  
17 contents of those reports and that I continue to treat, whether  
18 the person needs it or not or whether it's doing good or not as  
19 long as it keeps showing up," I suggest to the Court that it  
20 will call upon the jury to speculate as to whether or not his  
21 charges and his treatments and ordered treatments are  
22 reasonable, necessary and the charges are reasonable and  
23 customary. So there are two parts to that.

24 The Oakland MRI I think is pretty obvious, but the --  
25 the one with Dr. Glowacki is a bit more complex and I concede

1 that, except you saw him testify. You saw the approach that he  
2 took and the things that he said to this jury relative to the  
3 way in which he fashioned his treatment protocol, and I submit  
4 that it will require them to speculate at best to find a way to  
5 relate his treatments to the injuries in this accident.

6 Thank you.

7 THE COURT: So you're challenging the plaintiff's  
8 whole case?

9 MR. HEWSON: I'm challenging Dr. Glowacki, yes, I am,  
10 and I guess that underlines the entire case, that's true, Your  
11 Honor.

12 THE COURT: Okay.

13 MR. HEWSON: Thank you.

14 MR. TEMROWSKI: Well --

15 THE COURT: Better to quit while you're ahead.

16 MR. TEMROWSKI: I won't say a word.

17 THE COURT: All right. Okay. Dr. Glowacki testified  
18 that there's a herniated disk at L4, L5, herniated disk of the  
19 cervical spine, fractured sternum. They reviewed the Oakland  
20 MRI and the Macomb MRI records. He has disabled the plaintiff  
21 from the time of the accident up to the present time. He  
22 stated that all the changes that he viewed on the Macomb and  
23 Oakland MRI reports and films are the result of trauma.

24 He told us that his professional opinion is that his  
25 services were reasonably necessary from the automobile

1 accident. Physical therapy was reasonably necessary from the  
2 automobile accident. Household assistance was reasonably  
3 necessary because of the automobile accident. The attendant  
4 care was reasonably necessary because of the automobile  
5 accident and that -- that he prescribed physical -- sorry,  
6 attendant care 12 hours a day, seven days a week; that the  
7 plaintiff is disabled from work.

8 Now, I don't specifically recall -- again, I don't  
9 specifically recall, that he testified that the Oakland MRI was  
10 reasonably necessary because that was not really -- as I  
11 reviewed the trial brief, that was not specifically mentioned  
12 or I would have paid much closer attention to that particular  
13 issue as to solely whether the Oakland MRI was reasonably  
14 necessary.

15 However, he did testify that the medical treatment  
16 and prescriptions that the plaintiff received were medically  
17 necessary as a result of the automobile accident, and the  
18 plaintiff did sustain these injuries in an automobile accident  
19 December 23rd, 2009. Therefore, I'm going to deny the Rule 50  
20 motion.

21 MR. HEWSON: Thank you, Your Honor.

22 MR. TEMROWSKI: Thank you.

23 THE COURT: Okay. Can we get some testimony -- how  
24 long is the video?

25 MR. HEWSON: Dr. Quint is how long, Mark?

1 THE WITNESS: Fifty minutes.

2 MR. HEWSON: It's 50 minutes, Your Honor, 5-0.

3 Whatever the Court's preference is, I'm ready to go. And Dr.  
4 Geiringer is about two hours and I should be done by noon.

5 THE COURT: Okay.

6 MR. TEMROWSKI: Your Honor, of course I'll do  
7 whatever you want to do, but at 2:00 o'clock, because I did  
8 think that we were stopping at 1:00 o'clock today, I have a  
9 court-ordered facilitation hearing that was originally set for  
10 1:00 o'clock. Because I thought we would be done by 1:00, I  
11 moved it to 2:00.

12 THE COURT: Plaintiff's case has gone two days over  
13 from what you told me as to how long it was going to last. So  
14 I cut you slack one day and now it's a second full day over the  
15 time that you've told me, which creates issues and problems in  
16 my docket.

17 MR. TEMROWSKI: Well, I don't want to upset Your  
18 Honor --

19 THE COURT: I'm not upset. I'm just trying.

20 MR. TEMROWSKI: No, no.

21 THE COURT: I'm just trying to think my way through  
22 this. All right. It's my understanding that you've -- are in  
23 agreement on the jury instructions, is that correct? That's  
24 what I was --

25 MR. TEMROWSKI: Correct, Your Honor.

1 MR. HEWSON: Correct, Your Honor. Those are done.

2 MR. TEMROWSKI: Yes.

3 THE COURT: Okay.

4 MR. TEMROWSKI: Yes.

5 THE COURT: So before you leave today, just --  
6 there's a jury instruction packet. Just take a look at it and  
7 make sure this is the agreement, as well as the verdict form.

8 MR. HEWSON: Yes, sir.

9 MR. TEMROWSKI: Yes, sir.

10 THE COURT: Don't leave until that's been resolved.  
11 So we'll bring the jury back and we'll tell them that  
12 we've got a break for the day.

13 MR. TEMROWSKI: Thank you.

14 (Whereupon the jury entered the courtroom at  
15 12:57 p.m.)

16 THE CLERK: Please be seated.

17 THE COURT: Okay. Mr. Hewson, do you wish to present  
18 a case on behalf of State Farm?

19 MR. HEWSON: Yes, Your Honor, thank you. I will.

20 THE COURT: Okay. That will start tomorrow at 8:30  
21 in the morning, okay? So I'm going to need everyone back  
22 upstairs at 8:00 o'clock tomorrow morning, okay?

23 And as I understand, correct me if I'm wrong, you're  
24 going to have two witnesses, is that true?

25 MR. HEWSON: That is correct.



1 THE COURT: You believe you're going to have two  
2 witnesses but things change.

3 MR. HEWSON: Yes, sir.

4 THE COURT: And who are those two witnesses?

5 MR. HEWSON: We've got Dr. Quint and Dr. Geiringer  
6 and I may have Ms. Page come back.

7 THE COURT: And Dr. Quint and Dr. Geiringer will be  
8 by way of?

9 MR. HEWSON: By deposition, Your Honor.

10 THE COURT: And is Quint going to be the first one or  
11 Geiringer?

12 MR. HEWSON: Dr. Quint will be the first witness,  
13 he's 50 minutes in that deposition, and I believe Dr. Geiringer  
14 is two hours.

15 THE COURT: Okay.

16 MR. HEWSON: I'm going to take a few of the  
17 objections out, but I think that will be what the extent of the  
18 time is.

19 THE COURT: Very good. Did you have a question?

20 JUROR IN SEAT NO. 2: No, no, I'm sorry, Judge.

21 THE COURT: Do you have a question?

22 JUROR IN SEAT NO. 1: I do.

23 THE COURT: Why don't you write me a note.

24 JUROR IN SEAT NO. 1: Okay.

25 (Brief pause)

1 THE COURT: What's that?

2 JUROR IN SEAT NO. 1: My writing.

3 THE COURT: She can read mine.

4 Great question. The question is, "Will we conclude  
5 at 1:00 o'clock p.m. or go into closing statements?" My  
6 thought is that probably do -- we'll probably do closings  
7 Thursday morning, okay? We'll finish with the proofs tomorrow.

8 JUROR IN SEAT NO. 1: Okay.

9 THE COURT: Okay. Which is the presentation. So Mr.  
10 Temrowski does have the opportunity for rebuttal when Mr.  
11 Hewson gets done. So no, we're not going to go in the  
12 afternoon, okay? But on Thursday, plan on -- you're going to  
13 be in deliberations on Thursday. Remember when we first got  
14 together last week I told you once you go into deliberations,  
15 it's all day, okay? All right.

16 JUROR IN SEAT NO. 1: Okay.

17 THE COURT: And that will probably -- I would assume  
18 you're going to be in deliberations later on Thursday morning,  
19 okay?

20 JUROR IN SEAT NO. 1: Okay.

21 THE COURT: All right.

22 JUROR IN SEAT NO. 1: Thank you.

23 JUROR NO. 4: I have an additional question. What  
24 about -- does Friday count?

25 THE COURT: Yeah.

1 JUROR IN SEAT NO. 4: Okay.

2 THE COURT: Your three-day weekends are over. Okay.  
3 See everybody tomorrow.

4 THE CLERK: All rise.

5 (Whereupon the jury was excused at 1:00 p.m.)

6 THE CLERK: Please be seated.

7 Okay. I have your proposed jury instructions. I  
8 would ask both of you to take this time to review them very  
9 carefully to make sure these are the jury instructions that you  
10 wish to have read to the jury. I do not see a verdict form in  
11 there.

12 MR. HEWSON: There was -- we were doing the standard  
13 verdict form, Judge.

14 THE COURT: Okay. Well, it needs a caption, have a  
15 caption of the case.

16 MR. HEWSON: Oh, okay. There's one that says  
17 "Plaintiff's Proposed Verdict Form" on it.

18 THE COURT: We're going to have to have a -- I  
19 understand this is an agreed-upon verdict form, but this needs  
20 to be presented to the jury so the word "proposed" needs to  
21 be --

22 MR. HEWSON: I'll take care of that, Judge.

23 THE COURT: But also you're going to have to fix --  
24 in the body it has "he/she."

25 MR. HEWSON: I'll fix that.

1 MR. TEMROWSKI: You'll take care of that?

2 MR. HEWSON: I'll take care of that.

3 THE COURT: So Mr. Temrowski and Mr. Hewson, when you  
4 have finished your review -- and again, I caution you to review  
5 the jury instruction packet very carefully that you've agreed  
6 upon as well as the verdict form -- when you have finished that  
7 review, if you will let me know and we will place that on the  
8 record.

9 MR. HEWSON: Yes, sir.

10 THE COURT: And do you have the special instruction?  
11 I didn't see that.

12 MR. HEWSON: That was the one that we had on the  
13 table here?

14 THE COURT: Yeah.

15 MR. HEWSON: I'll retype that one, Judge, to take  
16 that line out.

17 We agree on this?

18 MR. TEMROWSKI: Right.

19 MR. HEWSON: Okay. We agree.

20 (Brief pause at 1:05 p.m.)

21 (Proceedings resumed at 1:10 p.m.)

22 THE CLERK: Court's back in session.

23 And Mr. Hewson, you can go ahead and file that, file  
24 those documents.

25 MR. HEWSON: File them both electronically?

1 THE CLERK: Yes.

2 MR. HEWSON: I will take care of that when I get  
3 back.

4 THE COURT: Okay. So I have the jury instructions  
5 that you wish me to read the jury in this folder right here?

6 MR. TEMROWSKI: Yes, sir.

7 MR. HEWSON: Yes, sir.

8 THE COURT: And as I understand, 701 has been taken  
9 out, so you do not want a theory of the parties read to the  
10 jury, is that correct?

11 MR. TEMROWSKI: Yes, Your Honor.

12 MR. HEWSON: That is correct, Your Honor.

13 THE COURT: And do we have a verdict form?

14 MR. HEWSON: I -- what I had spoken to the Court  
15 staff was I'm going to retype the verdict form and retype the  
16 special requested instruction and E-file those and bring hard  
17 copies in the morning.

18 MR. TEMROWSKI: That's fine.

19 THE COURT: Okay. All right. Thank you. See you  
20 tomorrow morning.

21 MR. HEWSON: Thanks, Judge.

22 MR. TEMROWSKI: Thank you very much.

23 THE COURT: So I take it you're withdrawing your  
24 request for 601?

25 MR. TEMROWSKI: Yes, Your Honor.

1 THE COURT: Okay. Very good.

2 MR. HEWSON: Thank you, sir.

3 (Court in recess at 1:12 p.m.)

4 (Whereupon proceedings in the above-entitled matter  
5 were adjourned to Wednesday, December 5, 2012)

6 — — —

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 70 comprise a full, true and correct transcript taken in the matter of Jaroslaw Waskowski vs. State Farm Mutual Automobile Insurance Company, Case No. 11-13036, on Tuesday, December 4, 2012.

s/Linda M. Cavanagh  
Linda M. Cavanagh, CSR 131, RPR, CM, CRR  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: September 18, 2013  
Detroit, Michigan